

## REMARKS

Upon entry of this amendment, claims 62-65, 73 and 78-79 are pending in the instant application. Claims 63-65 have been amended herein, and claims 66, 68-72 and 74-77 have been cancelled. Applicants reserve the right to prosecute that subject matter, as well as the originally presented claims, in continuing applications. Support for the claim amendments presented herein can be found throughout the specification and in the claims as originally filed. For example, support for the term "wherein the polypeptide has superantigen (SAg) activity", as recited by amended claims 63-65, is found in the specification at least at page 24, lines 16-19 and lines 26-27; and at page 26, lines 3-9. Accordingly, no new matter has been added by these amendments.

Applicants note that the Examiner has allowed claims 62, 73 and 78-79.

### I. ELECTION/RESTRICTION

Applicants note that claims 70-72 and 74-76, drawn to a nonelected invention, have been cancelled herein. Applicants reserve the right to prosecute that subject matter, as well as the originally presented claims, in continuing applications.

### II. OATH/DECLARATION

Applicants note that the objection to the Declaration has been withdrawn as the Declaration filed by Applicants on March 13, 2000 was executed in accordance with 37 C.F.R. §1.68.

### III. MAINTAINED CLAIM REJECTIONS UNDER 35 U.S.C. § 112

The Examiner has maintained the rejection of claim 66 under 35 U.S.C. § 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the art that the inventors had possession of the claimed invention, at the time the instant application was filed. The Examiner has asserted that claim 66 is drawn to naturally occurring allelic variants that the specification does not describe.

Applicants note that claim 66 has been cancelled herein. Thus, any rejection of this claim has been rendered moot and should be withdrawn.

#### **IV. NEW GROUNDS OF REJECTION**

##### **A. Claim Objections**

The Examiner has objected to claim 68 and 69 under 37 C.F.R. 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim.

Applicants note that claims 68-69 have been cancelled herein. Thus, any rejection of these claims have been rendered moot and should be withdrawn.

##### **B. Claim Rejections – 35 U.S.C. § 112, second paragraph**

Claim 63-65 and 77 have been rejected under 35 U.S.C. § 112, second paragraph for failing to particularly point out and distinctly claim the subject matter Applicants regard as the invention.

###### **Claims 63-65**

The Examiner has asserted that claims 63-65 lack sufficient antecedent basis for the limitation “the variant” recited in line 1. In addition, the Examiner has asserted that claims 63 and 64 are confusing and, therefore, indefinite, as these claims refer to parts (a) and/or (b) of the base claim (*i.e.*, claim 62), which do not exist in the base claim.

With regard to the Examiner’s rejection of claims 63-65, Applicants note that these claims have been amended herein to remove any reference to parts (a) and/or (b) of claim 62. In addition, claims 63-65 have been amended herein to recite “an isolated polypeptide comprising a variant of the amino acid sequence of SEQ ID NO: 36”. Thus, the term “the variant” in claims 63-65 has sufficient antecedent basis. Accordingly, Applicants request that the Examiner withdraw this rejection with regard to claims 63-65.

###### **Claim 77**

The Examiner has also rejected claim 77 under 35 U.S.C. § 112, second paragraph as being confusing and unclear. According to the Examiner, “it is not clear what kinds of product(s)” are claimed by the claim 77, as “the specification says that SEQ ID NO:38 at position 154 is stop signal, which indicates SEQ ID NO: 38 might be two proteins instead of an isolated polypeptide as indicated.” (Office Action, page 3).

Applicants note that claim 77 has been cancelled herein. Thus, any rejection of this claim has been rendered moot and should be withdrawn.

**B. Claim Rejections – 35 U.S.C. § 112, first paragraph**

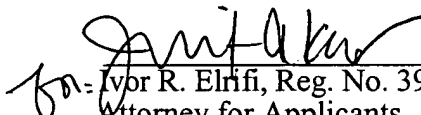
Claim 77 has been rejected under 35 U.S.C. § 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains to make and/or use the invention. In particular, the Examiner has asserted that the specification does not teach how to make the protein comprising SEQ ID NO:38.

Applicants note that claim 77 has been cancelled herein. Thus, any rejection of this claim has been rendered moot and should be withdrawn.

**CONCLUSION**

On the basis of the foregoing amendments, Applicants respectfully submit that the pending claims are in condition for allowance. If there are any questions regarding these amendments and remarks, the Examiner is encouraged to contact the undersigned at the telephone number provided below.

Respectfully submitted,

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